IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

MFA.No. 311 of 2002(B)

AGAINST THE ORDER DATED 13/06/2001 OF W.C. COURT KOTTAYAM IN W.C.C. NO. 20/97).

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APPELLANT/2ND OPPOSITE PARTY:

THE NEW INDIA ASSURANCE CO.LTD.,
REPRESENTED BY ITS ASSISTANT ADMINISTRATIVE OFFICER, REGIONAL OFFICE, KANDOMKULATHY TOWERS, M.G.ROAD, ERNAKULAM.

BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL.

RESPONDENTS/APPLICANT & 1ST OPPOSITE PARTY:
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1. **C.K.RAJU, S/O. P.C.KURIAN,**
   CHERUKUNNEL HOUSE, MANARCADU.

2. **C.P.MUHAMMED, S/O. MOIDEEN,**
   CHAKKIPARAMBIL HOUSE, VELLARKUNNU P.O.,
   CHIRAKKARA, MANANTHAVADI.

BY ADV. SRI.JOHN VARGHESE,
ADV. SRI. T. SAJI.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 16/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 1580/2002 IN M.F.A. NO. 311/2002

DISMISSED

SD/- J.B.KOSHY, JUDGE.

16/10/2007. **SD/- K.HEMA, JUDGE.**

//TRUE COPY//

prv.

J.B.KOSHY & K.HEMA, JJ.

M.F.A.No.311 OF 2002

Dated 16th October, 2007

JUDGMENT

Koshy,J.

First respondent/claimant, a driver by profession, met with an accident during the course of employment. As a result of the accident, he sustained serious injuries. Ext.A6 is the medical certificate. Injuries shown in the medical certificate are crush injury hand with traumatic amputation of right, middle and ring fingers at the level of proximal phalanx and index finger at level of Distl. phalanx. Lacerated injury on the palmer aspect of (Rt) little finger. The Commissioner awarded compensation for 60% loss of earning capacity even though disability certificate produced shows that there is only 20% disability. The assessment of loss of earning capacity is questioned by the insurance company in this appeal. According to the Commissioner, appellant is a driver by profession. As a result of the accident he lost grip to drive the vehicle. Even though claim was for 100% loss of earning capacity , Commissioner assessed loss of earning capacity at 60%. Contention of the insurance company is that even going by the schedule 60% loss of earning capacity is on the high side. We note that there is amputation of four fingers though the entire fingers were not amputated. Since the four fingers are amputated, his disability is considerably increased and

being a driver it can be taken as loss of four fingers of one hand mentioned in Schedule I Part II Item No.7 the loss of earning capacity of which is fixed as 50%. This is all the more important as the respondent is a driver. Therefore, compensation payable will be Rs.2,000 x $\frac{60}{100}$ x 163.07 x $\frac{50}{100}$ = 97,842/=. He is also entitled to proportionate interest and cost as directed by the Commissioner. As a condition precedent in filing the appeal, an amount was deposited on 9.1.2002. Excess amount deposited shall be refunded to the appellant and the amount due to the claimant shall be disbursed forthwith.

The appeal is partly allowed.

J.B.KOSHY
JUDGE

K.HEMA
JUDGE

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